

## **Final Regulations<sup>1</sup> Say Trusts Cannot Be Used to Shelter Assets from Medi-Cal**

"It is important for insurance professionals to understand that individuals are no longer able to shelter nonexempt income and property within trusts as a way to establish eligibility for Medi-Cal," states Sharyl Shanen-Raya, financial eligibility analyst with the Medi-Cal Eligibility Branch, Department of Health Services. "The final regs cover any kind of a trust created by an individual or their spouse." Final regulations on the treatment of trusts and annuities were filed with the Secretary of State's office on January 28, 1998. These regulations finalize instructions contained in previously published All County Welfare Director's letters #95-75 and #96-68 (now Section 50489 of Title 22). According to Shanen-Raya, "the new Regs impact all trusts established on or after August 11, 1993 containing the income, property or property rights of an individual or the individual's spouse."

If an individual or spouse creates a trust, Medi-Cal counts as currently available anything contained within that trust (if not normally exempt; such as a home) regardless of when or whether distributions can be made and **regardless of any special use limitations**. "That means, that no matter how remote the possibility of a distribution may be, it will be currently counted for purposes of establishing eligibility for Medi-Cal," Shanen-Raya notes. In addition, anything that cannot be released under any circumstance is subject to a transfer-of-property penalty which means that an individual may be ineligible for nursing facility level of care for the number of months that the property could have paid for their care at the average private pay rate.

There is one exception: trusts established for a disabled individual by someone other than him or herself where there is specific language contained in the trust requiring repayment to DHS for the cost of medical assistance upon the death or earlier termination of the trust.

<sup>1</sup> Package R-20-94 affecting Title 22 California Code of Regulations, section 50489 et seq.